

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP108

Cir. Ct. No. 2011CV292

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

DEUTSCHE BANK NATIONAL TRUST COMPANY,

PLAINTIFF-RESPONDENT,

V.

ANDREW G. HINWOOD,

DEFENDANT-APPELLANT,

BECKY ANDERSON HINWOOD,

DEFENDANT.

APPEAL from an order of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Andrew Hinwood, pro se, appeals an order denying relief from a default judgment of foreclosure. We affirm the order.

¶2 Deutsche Bank National Trust Company sought enforcement of a note by foreclosure of a related mortgage. The circuit court granted default judgment. Hinwood subsequently sought relief from judgment under WIS. STAT. §§ 806.07(1)(c) and (h).¹ The circuit court denied relief and Hinwood now appeals.²

¶3 A circuit court has wide discretion in determining whether to grant relief from judgment under WIS. STAT. § 806.07. See *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. We review such a determination under the erroneous exercise of discretion standard. *Id.* We will not reverse a discretionary determination if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision. *Id.*, ¶30. We generally look for reasons to sustain a circuit court's discretionary determination. *Id.*

¶4 WISCONSIN STAT. § 806.07(1)(c) allows relief from judgment on grounds of “fraud, misrepresentation, or other misconduct of an adverse party.” In his brief to the circuit court, Hinwood alleged Deutsche Bank misrepresented its standing to bring the foreclosure action, and was not the true owner of the note and mortgage. At the motion hearing, Hinwood also alleged Deutsche Bank filed

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

² On appeal, Hinwood also argues entitlement to relief based on WIS. STAT. § 806.07(1)(a), excusable neglect. Generally, we do not consider issues raised for the first time on appeal. See *Wirth v. Ehly*, 93 Wis. 2d 433, 443, 287 N.W.2d 140 (1980).

fraudulent documents, insisting signatures “clearly weren’t signed by the same person” Hinwood also asserted, “[T]he note we received that says pay to the order of Deutsche Bank National Trust Company, that’s not dated, don’t know when it was dated for.”

¶5 However, Hinwood presented no evidence at the motion hearing.³ Absent an expert witness who would testify on his behalf regarding the purported illegitimacy of signatures on documents, Hinwood’s allegations in that regard are largely speculative. *See State v. Street*, 202 Wis. 2d 533, 548-49, 551 N.W.2d 830 (Ct. App. 1996).

¶6 In any event, section one of the note specifically states, “I understand that Lender may transfer this note.” The assignment of the note to Deutsche Bank was contained on the note itself in the form of a special endorsement. Although Hinwood claims an undated assignment is invalid, he fails to provide citation to legal authority supporting this contention. We will therefore not further address the issue. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶7 Moreover, the mortgage states that Mortgage Electronic Registration Systems, Inc. (“MERS”) is the mortgagee and nominee for the lender: “Borrower does hereby mortgage, grant, and convey to MERS (solely as nominee for Lender and Lender’s successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property” An

³ Essentially, Hinwood requested more time to investigate the alleged fraud, through further discovery. However, default judgment had already been entered.

assignment of the mortgage from MERS to Deutsche Bank was recorded on February 5, 2010.

¶8 In addition, Hinwood executed a loan modification agreement with Deutsche Bank that indicated Deutsche Bank was the lender and MERS was the mortgagee. Subsequent to that modification, Hinwood defaulted. Hinwood may not now be heard to argue that Deutsche Bank lacks standing.

¶9 In his briefs on appeal, Hinwood also insists the circuit court erred by not “ordering” Deutsche Bank to produce the original note, which he claims differs from previous certified copies submitted to the court. However, Deutsche Bank contends it provided Hinwood the opportunity to inspect the original documents at its attorney’s offices, but Hinwood “chose not to.” Hinwood does not refute this contention, and we therefore deem it conceded. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶10 Hinwood also premised his motion in the circuit court on WIS. STAT. § 806.07(1)(h), which permits the trial court to grant relief from judgment for “any other reasons justifying relief.” Relief under this section may only be afforded when extraordinary circumstances are present justifying relief in the interest of justice. *Miller*, 326 Wis. 2d 640, ¶35. “The party seeking relief bears the burden to prove that extraordinary circumstances exist.” *Id.*, ¶34. Extraordinary circumstances are those “where the sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice must be done in light of all the facts.” *Id.*, ¶35 (citations and emphasis omitted).

¶11 Our review of the record on appeal leaves us unpersuaded that extraordinary circumstances exist sufficient to disturb the circuit court’s

discretionary decision. In this regard, we acknowledge Hinwood's allegations of negligent representation by his trial attorney. However, the role of an appellate court is not fact-finding. Whatever claims Hinwood may have against his attorney, if any, would constitute a separate action, not relevant to the issues preserved for this appeal.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

